U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

PUBLIC COPY

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MAR 26 2004

FILE: [redacted] Office: NEW DELHI, INDIA Date:

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant married a naturalized citizen of the United States on June 27, 2001. The applicant is the beneficiary of an approved Petition for Alien Relative and seeks the above waiver of inadmissibility in order to reside in the United States with his wife.

The officer in charge (OIC) concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. Although the issue was not legally reached by the OIC's decision, the OIC further found that the applicant did not merit a waiver as a matter of discretion. *See* Decision of the Officer in Charge, dated June 4, 2003.

On appeal, counsel contends that the Department of Homeland Security [Citizenship and Immigration Services] erred in requiring the applicant to make a showing of extreme hardship and that the applicant has made a showing of extreme hardship. *See* Letter from [redacted] dated September 26, 2002.

In support of these assertions, counsel submits a declaration of the applicant's spouse, dated September 27, 2002; a copy of a letter from a physician treating the applicant's spouse, dated September 12, 2002; a copy of a letter from the Dean of Student Services of Fresno City College, dated August 30, 2002; verification of the attendance of the applicant's wife at Fresno City College and Hanford Adult School, dated August 8, 2002 and August 16, 2002, respectively; copies of scholastic performance by the applicant's wife and a copy of a police report for a vehicular accident involving the applicant's wife.

The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant attempted to procure entry into the United States by falsely representing himself to be the fiancé of an American citizen.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's wife. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Counsel contends that the application should not be considered under section 212(i) of the Act which requires a finding of extreme hardship, but instead should be evaluated under section 237(a)(1)(H) of the Act which does not require such a finding. *See* Letter from [redacted] dated September 26, 2002. Counsel states, "As the applicant is within the United States as per the language of the subsection, it is this latter provision under which her request for waiver should be considered. ... The applicant should not have thus been required to the show the 'extreme hardship' that would result to her spouse." *Id.* The AAO notes that the applicant in this case is [redacted] not [redacted] as indicated by the quoted passage of counsel. Counsel's assertion is unpersuasive as section 237(a)(1)(H) of the Act applies to waivers of deportability while section 212(i) of the Act applies to waivers of inadmissibility. The applicant seeks a waiver of inadmissibility as evidenced by his filing of a Form I-601 Application for Waiver of Ground of Excludability. Furthermore, the applicant, [redacted] is not within the United States as contended by counsel. The AAO finds that the OIC correctly evaluated the Form I-601 application in terms of whether extreme hardship had been established to Rupinder Kaur, the qualifying relative of the applicant, and determined that extreme hardship was not established in the application.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel contends that the applicant's spouse would endure extreme hardship as a result of relocating to India to reside with the applicant. Counsel indicates that the entire family of the applicant's wife resides in the United States and she has received most of her education in the United States. *See* Letter from [redacted] The applicant's wife is pursuing a career as a physician's assistant and cites the tremendous employment opportunities in the United States as one of the country's many benefits. *See* Declaration of [redacted] dated September 27, 2002. She also states that she has no property in India and that the political climate there is not promising. *Id.*

Counsel does not establish extreme hardship to the applicant's wife if she remains in the United States in order to maintain her close familial ties, company of friends, career prospects and access to the political and social stability of American society. The AAO notes that, as a naturalized U.S. citizen, the applicant's spouse

is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel asserts that the applicant's wife suffers from depression as a result of her separation from the applicant. Counsel submits a letter from the Dean of Student Services at Fresno City College and a letter from the primary care physician of the applicant's wife in support of the assertion of depression. The letter from her primary care physician states that she was diagnosed with depression and that the doctor is trying "every treatment possible, including medications to relieve her depression." *See* Letter from [redacted] MD, dated September 12, 2002. However, the AAO notes that the record does not demonstrate a diagnosis of depression for the applicant's wife by a mental health professional and it does not establish the effectiveness of the treatment administered to the applicant's wife. Although the record indicates that her studies have been interrupted as a result of her depression, portions of her education appear to continue undisturbed. *See* Letter from [redacted] dated August 30, 2002. *Contrast* Letter from [redacted] RN, dated August 16, 2002.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's wife endures hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.